

P. Williams



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Minigraph, Inc.

File: B-237873.2

Date: May 14, 1990

Gilbert J. Ginsburg, Esq., and Daniel B. Abrahams, Esq.,
Epstein Becker & Green, for the protester.
Michael L. Dougherty, for CAECOR.
Jonathan H. Kosarin, Esq., and Michael D. Rigg, Esq., Office
of the General Counsel, Department of the Navy, for the
agency.
Paula A. Williams, Esq., Paul Lieberman, Esq., and John F.
Mitchell, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Decision to award to higher-priced, higher technically
rated offeror was proper where the solicitation award
criteria made technical considerations more important than
price and the agency reasonably concluded that the awardee's
higher total point score resulting from its technical
superiority established that its proposal was worth the
price premium.

DECISION

Minigraph, Inc. protests the award of a contract under
request for proposals (RFP) No. N00189-88-R-0019 to
Computer-Aided Engineering Corporation (CAECOR). The RFP
was issued by the Naval Supply Center, Norfolk, Virginia to
acquire engineering and technical services for Computer-
Aided Design and Computer-Aided Engineering (CAD/CAE) for
the Naval Aviation Depot at Cherry Point, North Carolina.
Among other allegations, Minigraph contends that the
evaluation process was tainted by misrepresentations in
CAECOR's proposal, that the Navy's evaluation of Minigraph's
proposal was unreasonable and that the agency failed to hold
meaningful discussions with Minigraph.

We deny the protest.

The RFP called for a time and material, indefinite delivery,
indefinite quantity contract for a 1-year period with four

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1-year options. The evaluation scheme stated that technical merit would predominate over price and that award would be made to the offeror whose proposal offered the greatest value to the government in terms of technical merit rather than to the offeror with the lowest estimated cost.

To this end, the solicitation set forth a scoring system in which the maximum technical score was 60 percent, achievable in the following categories:

(1) Technical Approach

- a. Technical capability (25.5 percent of the entire proposal);
- b. Work sample (evaluated as pass/fail; not weighted); and
- c. Personnel qualifications (9.5 percent of the entire proposal)

(2) Management Approach

- a. Corporate experience (10 percent of entire proposal); and
- b. Management plan (15 percent of entire proposal).

Price accounted for a maximum possible score of 40 percent. Although not specifically disclosed in the RFP, the evaluation was conducted on a numerical basis with 10,000 points assigned as the maximum number of possible points, of which 6,000 points was the maximum technical score and 4,000 points was the maximum price score.

Five proposals were submitted. Each was evaluated and four, including those of CAECOR and Minigraph, were initially determined to be technically unacceptable but capable of being made acceptable. The fifth proposal was rejected as technically unacceptable. Following a series of discussions and reevaluations, the four proposals were determined to be technically acceptable. Best and final offers (BAFOs) were then requested and the final prices and scores were as follows:

Offeror	Total Price	Max. Ach. Score	Weighted Tech. Score	Weighted Price Sc.	Total Score
CAECOR	\$7,540,022	10,000	4,692	3,495	8,187
Mini-graph	\$6,694,107	10,000	3,207	4,000	7,207
No. 3	\$9,459,880	10,000	4,447	2,348	6,795
No. 4	\$11,591,797	10,000	4,058	1,015	5,073

The contracting officer determined that CAECOR's proposal was technically superior to the protester's and CAECOR was awarded the contract on November 20, 1989. After receiving notification of the award, Minigraph filed its protest in our Office on November 24. The Navy did not debrief Minigraph until December 15. Thereafter, Minigraph filed a supplement to its protest. Performance of the contract has been suspended pending our decision on the protest.

Minigraph makes a number of allegations concerning CAECOR's representations to the Navy which Minigraph believes led the Navy to miscalculate CAECOR's proposal. The most significant of these concern CAECOR's alleged misrepresentation of its corporate and management experience and its failure to disclose its relationship with two other corporate entities.

Minigraph argues that CAECOR lacks corporate experience since it was incorporated only on September 19, 1988, 9 days prior to the issuance of the RFP. Consequently, the protester maintains that any corporate experience that CAECOR represented it possessed could only be derived from "the personal experience of a prior defunct corporation that its principal officer was involved in." That defunct corporation, Computer-Aided Design Services, Inc. (CADSI), was allegedly "closed down by an IRS tax lien." In any event, Minigraph argues that if CADSI's experience is relevant, CAECOR should not have received a higher evaluation score for this criterion than Minigraph, in view of CADSI's track record of alleged successes and failures. Similarly, Minigraph asserts that CAECOR's proposal should have been downgraded under the management experience criterion because CAECOR "misrepresented CADSI management experience as its own," and, allegedly, CADSI's officers had inadequate management skills.

The Navy states it was not misled by any alleged misrepresentations in CAECOR's proposal. With regard to the alleged corporate and/or management experience misrepresentations, the agency first points out that the RFP

specifically permitted "new companies with no prior corporate history" to substitute the history of key personnel. The agency evaluators were aware of CAECOR's reliance on its key personnel experience, and the proposal was evaluated accordingly. In addition, the agency found no evidence that CAECOR misrepresented any material fact in its proposal or otherwise improperly relied on the resources of any other corporate entity, such as Dynatec, another firm with which CAECOR's principal was associated.

Where an agency evaluation is challenged, we will examine that evaluation to insure that it was reasonable and consistent with the evaluation criteria. We will question a contracting agency's determination of the technical merit of proposals only upon a clear showing of unreasonableness or abuse of discretion. See Monarch Enterprises, Inc., B-233303 et al., Mar. 2, 1989, 89-1 CPD ¶ 222. Such a showing is not made by the protester's mere disagreement with the evaluation or by its good faith belief that its own proposal should have achieved a higher rating. Id.

Our review of CAECOR's proposal and the technical and cost evaluations discloses that, contrary to the premise of Minigraph's allegations, the Navy properly evaluated CAECOR's proposal. The solicitation provided specific notice that "start-up" companies, such as CAECOR, were permitted to substitute key personnel experience for corporate experience. Thus, the fact that CAECOR itself had little corporate experience does not mean that the company could not be evaluated highly. Rather, the Navy reasonably credited CAECOR for the personal experience of its key personnel. Further while the record indicates that there may have been a business relationship among CAECOR, Dynatec and CADSI, Minigraph has provided no probative evidence that CAECOR misrepresented or otherwise misled the agency with regard to its technical experience, resources or capability to perform the contract, and there is no such evidence in the record.

Next, Minigraph contends that the Navy improperly downgraded its proposal in two areas and attributes this wrongful action to the Navy's failure to hold meaningful discussions with the firm. Specifically, Minigraph asserts the Navy's letter of September 18 and superseding letter of September 22, initiating discussions and purporting to contain questions concerning perceived deficiencies in the firm's proposal, were incomplete and misleading. According to the protester, it was never informed of the evaluators' determination that one of its proposed key employees--the project engineer--did not possess the minimum required

education and experience, nor of the determination that Minigraph's proposal lacked evidence of the firm's experience in the creation and maintenance of CAD facility databases.

As noted above, the Navy initially evaluated Minigraph's proposal as unacceptable but capable of being made acceptable. One of the areas of Minigraph's proposal which needed attention was identified by the evaluators in the September 22 discussions letter as follows:

"Clause L12A-A.2.b.(7)(d) - Elaborate and clearly define experience and education of all key personnel."

The Navy reports that in response, Minigraph submitted a revised proposal in which the firm essentially stated that it had previously "provided resumes for our three key personnel." Since Minigraph did not elaborate or further define the experience and education of its key personnel, Minigraph's rating for this subfactor did not improve.

Another problem area was identified in the September 22 letter as follows:

"Clause L12A-A.2.b.(5)(g) - Elaborate and clearly define previous experience in the creation of CAD facility databases."

Minigraph responded by demonstrating that it had previous experience in the creation of CAD facility databases. As a result, Minigraph's rating on this subfactor improved.

In order to conduct meaningful discussions, an agency must impart enough information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. See Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. There is nothing inherently improper in the agency's use of general statements so long as the discussions are designed to guide an offeror to those portions of its proposal that require clarification or modification. Here, the discussion questions submitted to Minigraph clearly served to notify the firm of the Navy's concern regarding its key personnel--Minigraph was specifically requested to elaborate on the experience and education of its key personnel. The fact that Minigraph elected not to furnish additional data for its project engineer as it was requested to do does not establish that the Navy failed to provide Minigraph a fair and reasonable opportunity to identify and revise any weaknesses in its proposal. Thus,

we find that the Navy satisfied its obligation to conduct meaningful discussions with the protester.

Finally, Minigraph protests the Navy's source selection decision on the grounds that it was arbitrary. Specifically, the protester asserts that the agency evaluators "simply" tabulated the numerical ratings of each offeror and selected the offeror with the highest point score without regard to price. In doing so, the protester argues, the Navy "converted" the price differential of almost \$850,000 between its proposal and CAECOR's into a point score which "trivialized" the price differential.

An agency is not required to make award to a firm offering the lowest price unless the RFP specifies that cost will be the determinative factor. See Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565; B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23. Award to a technically superior, higher-priced offeror is proper where the record shows that the offeror's price premium was justified because of its technical superiority. Id. Here, the RFP contained a specific weighting formula and the contracting officer could reasonably conclude that award to the highest scored offeror was warranted. See Harrison Sys., Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572. Technical merit represented 60 percent of the total evaluation while price represented 40 percent.^{1/} The contracting officer noted in his source selection decision document that Minigraph offered the lowest price, but also had received the lowest technical score. The source selection document also contains a specific determination that there was no technical equality among the proposals and that the technical merit of CAECOR's proposal represented the greatest value to the government. Thus, the contracting officer reasonably concluded that the high total point score

^{1/} To the extent the protester asserts that price should have been given greater weight, its protest is untimely. The RFP specifically revealed the relative weights assigned to the evaluation criteria, including costs. Since this issue concerns an alleged solicitation impropriety, it should have been filed prior to the closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(2) (1989).

received by CAECOR accurately reflected the fact that CAECOR's technical superiority warranted the payment of the associated cost premium.

The protest is denied in part and dismissed in part.

Robert P. Hinchman
for James F. Hinchman
General Counsel